

### Remarks

Claims 1-23 are pending in this application. Claims 1-23 are rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,609,216 to Nguyen, et al. (hereinafter “Nguyen”).

#### **1. Rejection of Claims 1-23 Under 35 U.S.C. § 102(e)**

Claims 1-23 are rejected under 35 U.S.C. § 102(e) as being anticipated by Nguyen. Applicants respectfully traverse the rejections and submit that the reference relied upon does not disclose what is being claimed.

As to claim 1, Nguyen does not disclose “detecting a failed process on one of said cluster nodes; and duplicating said process on a virtual node on said second server . . . .” Rather, Nguyen discusses that “[t]he cluster monitors the health of the stand-alone servers . . . .” and in the event of failure, “the cluster will assume the identity of the failing server . . . .” (Nguyen, Abstract, col. 5 lines 41-58.) Thus, Nguyen discloses failover from the stand-alone server to the cluster, while the present invention is directed at failover from a cluster node to a virtual node on said second server.

As to claim 4, Nguyen does not disclose “a second server . . . having one or more virtual nodes . . . wherein if one or more of said cluster nodes fails, then said *process of said failed cluster node is transferred to one of said virtual nodes of said second server.*” First, Nguyen discusses creating “a group of virtual servers 44 that reside on *cluster server 18* . . . .” (Nguyen, col. 6 lines 4-5.) (emphasis added). Nguyen explains that the “recovery groups 44*a*, 44*b*, 44*c* and 44*d* [(the recovery groups are the virtual servers according to col. 6 lines 4-6)] are associated with servers 14*a*, 14*b*, 14*c* and 14*d* respectively.” (Nguyen, col. 6, lines 9-11.) In the event of a failure, “the *cluster* assumes the identity of the failing server . . . .” Nguyen, col. 6,

lines 25-27.) (emphasis added). This is different from the operation disclosed in claim 4. As claim 4 requires, “if one or more of said cluster nodes fails, then said *process of said failed cluster node is transferred to one of said virtual nodes* of said second server.” Therefore, Nguyen does not disclose the limitation.

With respect to claims 9, 14, and 19, Nguyen does not disclose “if one or more of said cluster nodes fails, then said process of said *failed cluster node is transferred to one of said virtual nodes of said second server.*” Nguyen describes the “*cluster server assumes the identity of the failing server . . .*” and that “in the event that one cluster server 18 fails, the other cluster servers 18 can assume that server’s identity and applications . . .” Nguyen, col. 6 lines 25-27 and col. 6 lines 44-48.)

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987), *see also* Manual of Patent Examining Procedure § 2131. As discussed above, Nguyen fails to disclose each and every element set forth in independent claims 1, 4, 9, 14 and 19. Therefore, Nguyen does not support rejection of these claims under 35 U.S.C. § 102(e). Applicants respectfully request that the Examiner withdraw the rejections to these claims. Furthermore, Applicants request that the rejections of dependent claims 2-3, 5-8, 10-13, 15-18 and 20-23 be withdrawn as these claims depend from otherwise allowable base claims.

## **2. No Waiver**

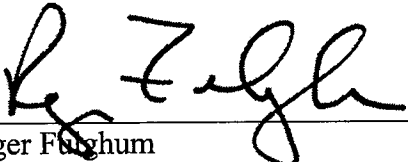
All of Applicants’ arguments are without prejudice or disclaimer. Additionally, Applicants have merely discussed example distinctions from the cited reference. Other distinctions may exist, and Applicants reserve the right to discuss these additional distinctions in

a later Response or on Appeal, if appropriate. By not responding to additional statements made by the Examiner, Applicants do not acquiesce to the Examiner's additional statements, such as, for example, any statements relating to what would be obvious to a person of ordinary skill in the art. The example distinctions discussed by Applicants are sufficient to overcome the anticipation rejections.

**Conclusion**

Applicants respectfully submit that the pending claims 1-23 of the present invention are allowable. Applicants respectfully request that the rejection of the pending claims be withdrawn and that these claims be passed to issuance.

Respectfully submitted,

  
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